IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 15105 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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JITUBHAI BALWANTBHAI DESAI - Petitioner(s)

Versus

STATE OF GUJARAT & 8 - Respondent(s)

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Appearance :

MR MC BHATT for Petitioner(s) : 1,
MR MR MENGADE ASST GOVERNMENT PLEADER for Respondent(s) : 1,
NOTICE NOT RECD BACK for Respondent(s) : 2,
MR MEHUL S SHAH for Respondent(s) : 3 - 6.
MR SURESH M SHAH for Respondent(s) : 3 - 6.
DS AFF.NOT FILED (N) for Respondent(s) : 7, 9.2.1, 9.2.2, 9.2.3,9.2.4

None for Respondent(s) : 8 - 9.
NOTICE SERVED for Respondent(s) : 8.2.1, 8.2.2, 8.2.3, 8.2.4, 8.2.5, 8.2.6,8.2.7

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 19/09/2005

ORAL JUDGMENT

1. Rule. Shri M.R.Mengade, learned AGP waives service of rule on behalf of the respondent Nos.1 &

2. Shri Suresh M. Shah, learned advocate waives service rule on behalf of the contesting respondent Nos.3 to 6. With the consent of the learned advocates for the parties, the matter is heard finally today.

2. In this petition under Articles 226 and 227 of the Constitution of India, the petitioner has challenged the legality and validity of the judgment and order passed by the Additional Secretary, Revenue Department (Appeals), State of Gujarat dated 8.4.2005 and 13.4.2005 passed in Revision Application No.62 of 2003 in partly allowing the said revision application and remanding the matter to the Collector, Vadodara.

3. The dispute is with regard to the Entry No.2162 dated 21.11.1984 with respect to the land bearing Survey No.658 situated at village Sevasi, Taluka Vadodara. It is the case on behalf of the petitioners that the land in question was in the name of one Jiviben who has executed one Will dated 28.1.82 and on the basis of the said will, the name of the

petitioners came to be mutated in the revenue records vide Entry No.2162 dated 21.12.1984. It appears from the record that the said entry came to be certified by the Additional Mamlatdar on 4.1.1985. The said entry came to be challenged before he Deputy Collector, Vadodara after a period for six years being RTS Appeal No.29 of 1990 and the Deputy Collector, Vadodara dismissed the said appeal on the ground of limitation. Being aggrieved and dissatisfied with the order passed by the Deputy Collector, Vadodara dated 9.3.1993 passed in RTS Appeal NO.29 of 1990, revision application came to be filed before the Collector, Vadodara which also came to be dismissed, against which, revision application came to be filed before the State Government i.e. Secretary (Appeals) and it is the case on behalf of the petitioners that the said revision application was partly allowed and the matter was remanded to the Collector, Vadodara for a limited purpose. The Collector, Vadodara on remand passed the order on 10.3.2003 dismissing the said revision application confirming the order passed by the Deputy Collector,

Vadodara dated 9.3.1993 passed in RTS Appeal No.29 of 1990. Being aggrieved and dissatisfied with the same, the contesting respondents i.e. Respondent Nos.3 – Shri Lalitbhai Ambalal Patel and three others i.e respondent Nos.3 to 6 herein preferred Revision Application No.62 of 2003 before the Secretary (Appeals), Revenue Department, State of Gujarat and the Additional Secretary (Appeals), Revenue Department, State of Gujarat by its judgment and order dated 13.5.2005 allowed the said revision application by remanding the matter to the Collector, Vadodara to pass appropriate order afresh after considering the observations made in the said order. Being aggrieved and dissatisfied with the order passed by the Additional Secretary (Appeals), Revenue Department, State of Gujarat dated 13th May, 2005 passed in Revision Application No.62 of 2003, the petitioner has preferred the present special civil application under Articles 226 and 227 of the Constitution of India.

4. Shri M.C.Bhatt, learned advocate appearing on

behalf of the petitioner has made number of submissions on merits with regard to the alleged Will. However, the dispute in the present special civil application is with regard to entry in the revenue records and the dispute with regard to probate and alleged will is pending before the Civil Court, this Court is not inclined to deal with the same on merits as any observations by this Court at this stage might affect either party. However, Shri M.C.Bhatt, learned advocate appearing on behalf of the petitioner has submitted that the Additional Secretary (Appeals), Revenue Department, State of Gujarat as well as the Collector, Vadodara while deciding the revision application on remand have gone beyond the scope of the order of remand passed by the Additional Secretary, Revenue Department (Appeals), State of Gujarat dated 13.4.2005. It is also further submitted that while deciding the question with regard to the entry, the revenue authority is not required to consider the legality and validity of the title and the dispute with regard to the probate, so also, the dispute with regard to title. Shri

M.C.Bhatt, learned advocate appearing on behalf of the petitioner has also submitted that in fact, the Civil Suit is already pending between the parties being Regular Civil Suit No.1814 of 1995 pending in the court of learned Civil Judge (SD), Vadodara and therefore, it is requested that an entry in favour of the petitioner on the basis of the alleged Will can be made subject to ultimate outcome of the judgment and decree that may be passed by the learned trial court in Regular Civil Suit No.1814 of 1995.

5. Shri Suresh M. Shah, learned advocate appearing on behalf of the contesting respondents Nos.3 to 6 has submitted that the dispute with regard to the probate and will is already pending before the learned Civil Judge (SD), Vadodara by way of Regular Civil Suit No.1814 of 1995 and the entry which can be made in favour of the petitioners can be made subject to ultimate outcome of the decision that may be rendered by the Civil Court in the aforesaid suit. However, it is submitted that on the basis of entry, the petitioner might put up construction and / or

alienate the land and therefore, the petitioner may be directed to maintain status quo and appropriate order be passed directing the the concerned Civil Court to decide and dispose of the aforesaid suit expeditiously as early as possible as the same is of the year 1995.

6. Shri M.R.Mengade, learned AGP has supported the order passed by the Additional Secretary (Appeals), however, has submitted that in the facts and circumstances of the case, an appropriate order may be passed by this Court.

7. Heard the learned advocates appearing on behalf of the respective parties.

8. It is to be noted that the dispute is with regard to the Entry in the revenue record. As held by the Hon'ble Supreme Court in case of DURGA DAS VS. COLLECTOR, AHMEDABAD AND OTHERS reported in (1996) 5 SCC 618 as well as this Court in catena of decisions, entry in the revenue record does not confer any

right, title or interest and as such, it is only for fiscal purpose for recovery of the taxes and if there is any dispute between the parties with regard to title, the parties are to be relegated to approach the appropriate forum of Civil Court for establishing their rights and necessary entry can be effected subject to ultimate outcome of the judgment and decree that may be passed by the Civil Court. As stated hereinabove, in the present case, the dispute is with regard to probate and title which is already pending before the Civil Court i.e. Court of learned Civil Judge (SD), Vadodara being Regular Civil Suit No.1814 of 1995. Under the circumstances, the entry in favour of the petitioner can be subject to ultimate outcome of the aforesaid civil suit pending before the learned Civil Judge (SD), Vadodara. Shri M.C.Bhatt, learned advocate appearing on behalf of the petitioner has submitted that they do not propose to put up any construction and status quo as on today will be maintained till the decision in Regular Civil Suit No.1814 of 1995 pending in the Court of the learned Civil Judge (SD), Vadodara.

9. Considering the aforesaid facts and circumstances of the case, the following order is passed.

[i] The judgment and order passed by the Additional Secretary dated 13.4.2005 passed in Revision Application No.62 of 2003 is quashed and set aside and the Entry No.2162 in respect of the land bearing Survey No.658 situated at village Sevasi of Taluka -Vadodara is hereby restored. However, the Revenue Authority is directed to make an additional entry in the revenue record that the said entry is subject to the ultimate outcome of the Regular Civil Suit No.1814 of 1995 pending in the court of learned Civil Judge (SD), Vadodara. The parties to abide by the ultimate outcome of Regular Civil Suit No.1814 of 1995 and necessary entry can be modified on the basis of the judgment and decree that may be passed by the learned Civil Judge (SD), Vadodara in Regular Civil Suit No.1814 of 1995.

[ii] As agreed by the learned advocates appearing on behalf of the parties, the parties to the present proceeding are directed to maintain status quo till the decision in Regular Civil Suit No.1814 of 1995 pending in the court of learned Civil Judge (SD), Vadodara.

[iii] The learned Civil Judge (SD), Vadodara and /or the trial court before whom the aforesaid suit is pending, is directed to decide and dispose of the aforesaid R.C.S. No.1814 of 1995 as early as possible and preferably within six months from the date of receipt of this order.

Rule is made absolute to the aforesaid extent, however, there will be no order as to costs.

Direct Service is permitted.

[M.R.Shah, J.]

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